

WILLIAM E. JOHNSON
Claimant

MID AMERICA ALL INDIAN CENTER
Respondent

COMMERCIAL UNION INSURANCE COMPANY
Insurance Carrier

ORDER

Respondent contends that claimant is not entitled to a permanent total disability, although acknowledging a permanent partial general disability under K.S.A. 44-510e is appropriate.

Claimant argues that the Award should be affirmed with regard to the award of permanent total disability, but contends that claimant should be awarded ongoing medical treatment with John C. Parks, M.D., for medication and pain management. The Appeals Board (Board) heard oral argument on June 15, 2004.

Claimant appeared by his attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kendall R. Cunningham of Wichita, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge (ALJ).

ISSUES

- (1) What is the nature and extent of claimant's injury?
- (2) Is claimant entitled to future medical care with his treating physician, John C. Parks, M.D.?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award granting claimant a permanent total disability in the above matter should be affirmed. Additionally, claimant is granted ongoing medical care with Dr. Parks for the required therapy and medications to treat the effects of his work-related injury. His treatment is authorized to continue until release or until further order of the Director or until modified by stipulation of the parties.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

Claimant was found to be permanently totally disabled based primarily upon the testimony of claimant and the opinions of Dr. Parks and Pedro A. Murati, M.D., a physical medicine specialist, who examined claimant on January 29, 2003. Both Dr. Parks and Dr. Murati found that claimant is realistically unemployable and not capable of any type of substantial gainful employment.¹ The Board agrees with that determination. Both Dr. Parks and Dr. Murati had the opportunity to examine claimant after all of the treatment modalities had been provided. While the Board acknowledges neither Paul S. Stein, M.D., Eustaquio Abay, II, M.D., nor John P. Estivo, D.O., found claimant to be permanently totally disabled, none of those doctors had the opportunity to view claimant and examine his problems in toto. Dr. Stein did not examine claimant's shoulders for frozen shoulder or adhesive capsulitis and acknowledged that Dr. Parks would be in a better position to examine and render an opinion about claimant and his chronic pain syndrome. Dr. Abay, who referred claimant to Dr. Parks, also testified that Dr. Parks, being a pain specialist,

¹ *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 872 P.2d 299 (1993).

would be in a better position to define whether claimant's ongoing pain problems would be limiting. Dr. Estivo treated claimant for his bilateral knee pain and his lumbar pain. However, Dr. Estivo provided no functional impairment to claimant for his lumbar spine, even though the last time he examined claimant, claimant had continuing symptoms. Additionally, Dr. Estivo did not measure claimant's right or left thighs to determine if any atrophy had resulted from claimant's low back problems.

In reviewing the evidence, the Board finds the opinions of Dr. Parks and Dr. Murati to be the most persuasive, as they were based upon claimant's overall picture, developed after claimant had undergone the medical treatments provided by the other health care providers. The Board, therefore, affirms the ALJ's determination that claimant is permanently and totally disabled.

The ALJ went on to award claimant future medical treatment upon proper application to the Director. Claimant argued, and the Board agrees, that application to the Director, while, at times, sufficient, is not appropriate in this instance. Dr. Parks, claimant's treating physician, testified that claimant had ongoing medical needs with regard to both therapy and pain medications. It is noted that the parties agreed at oral argument before the Board that Dr. Parks has continued as claimant's treating physician, even without a specific order. In this instance, the Board finds that the evidence supports a finding that claimant's ongoing conditions require ongoing therapy and palliative treatment in the form of pain medication. Accordingly, the Board orders respondent to provide ongoing medical treatment for claimant's work-related injuries through his treating physician, John C. Parks, M.D., for the recommended therapies and pain medications, until further order of the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated January 16, 2004, should be, and is hereby, affirmed in awarding claimant permanent total disability compensation for the injuries suffered on January 27, 2000, but modified to award claimant ongoing medical treatment with John C. Parks, M.D., the authorized treating physician, as above specified.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this ____ day of July 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
 Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier
 John D. Clark, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director